STATE OF MICHIGAN

COURT OF APPEALS

METRO INDUSTRIAL CONTRACTING, INC., Petitioner-Appellee,	UNPUBLISHED October 23, 2003
v	No. 240664 Ingham Circuit Court
BUREAU OF SAFETY AND REGULATION, Respondent-Appellant.	LC No. 01-093270-AA

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

PER CURIAM.

Respondent appeals by delayed leave granted the circuit court's order reversing its decision dismissing petitioner's appeal as untimely. We reverse the circuit court's decision and remand for reinstatement of respondent's decision. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On January 14, 2000, respondent cited petitioner for violations of the Michigan Occupational Safety and Health Act (MIOSHA), MCL 408.1001 *et seq*. On January 31, 2000, petitioner filed a timely written appeal of the citations.

Respondent contacted petitioner to arrange an informal settlement meeting. On February 11, 2000 petitioner contacted respondent by telephone and informed respondent that it wished to forego the informal meeting and proceed directly to the second-level formal appeal. Respondent's written decision stated that if petitioner wished to appeal, it was required to "file a notice of contest with this office within 15 working days of receipt of this decision . . . ." See MCL 408.1041. Petitioner received the decision on February 21, 2000, and filed a written notice of appeal on March 23, 2000, approximately seven days after the expiration of the fifteen-day appeal period.

Respondent dismissed the appeal as untimely, rejecting petitioner's argument that its statement during the telephone conference that it wished to move to the second-level formal appeal constituted sufficient notice that it wished to appeal respondent's decision.

Petitioner appealed to circuit court. Petitioner contended that the MIOSHA contained no requirement that a notice of appeal be in writing, and asserted that it gave sufficient notice of its intent to appeal during the February 11, 2000 telephone conference.

The circuit court reversed and remanded the case for reinstatement of the appeal. The court found that § 42 of the MIOSHA, MCL 408.1042, contained no requirement that a notice of appeal must be in writing, and petitioner preserved its right to appeal by giving notice during the telephone conference on February 11, 2000.

A circuit court's review of an administrative decision is limited to determining whether the decision was contrary to law, was supported by competent, material, and substantial evidence on the whole record, was arbitrary or capricious, or was otherwise affected by a substantial and material error of law. *Boyd v Civil Service Comm*, 220 Mich App 226, 232; 559 NW2d 342 (1996).

We review a lower court's review of an agency decision to determine whether the lower court applied correct legal principles, and whether it misapprehended or grossly misapplied the substantial evidence test to the factual findings made by the agency. *Dignan v Michigan Public School Employees Retirement Bd*, 253 Mich App 571, 575; 659 NW2d 629 (2002). This standard is the same as the clearly erroneous standard of review. *Id*. at 575-576. A finding is clearly erroneous when, after a review of the record, we are left with the firm and definite conviction that a mistake was made. *Id*.

An issue of statutory interpretation presents a question of law that is reviewed de novo. *Ronan v Michigan Public School Employees Retirement System*, 245 Mich App 645, 648; 629 NW2d 429 (2001). The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Id*.

The circuit court's decision is contrary to 1979 AC, R 408.21413 (Rule 413), respondent's valid administrative rule setting out the procedure for filing a notice of appeal.[1] MCL 408.1042 is silent as to whether a notice of appeal must be in writing. However, § 11(b) of the MIOSHA, MCL 408.1011(b), requires an employer to comply with the provisions of the act and the rules and standards promulgated thereunder. A notice of appeal must be "filed with the division of the department that issued the citation." Rule 413(1). Delivery of the notice for filing "may be accomplished by registered, certified, or first class mail or by personal delivery . . . ." Rule 413(2). Filing of the notice of appeal is deemed effective "at the time of mailing or at the time of personal service . . . ." Rule 413(3).

The clear language of Rule 413 indicates that the notice of appeal required by MCL 408.1042 must be in writing. MCL 408.1011(b) required petitioner to read MCL 408.1041 and

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[1] Respondent did not rely on Rule 413 in the circuit court, and the circuit court did not consider the rule in rendering its decision. While we are not obligated to review issues that are not properly preserved, we may disregard issue preservation requirements if we deem consideration of the issue necessary to a proper determination of the case. *Paschke v Retool Industries (On Rehearing)*, 198 Mich App 702, 705; 499 NW2d 453 (1993), rev'd on other grounds 445 Mich 502; 519 NW2d 441 (1994). We conclude that consideration of the applicability of Rule 413 is necessary to determine if the circuit court applied correct legal principles in reversing respondent's decision.

MCL 408.1042 in conjunction with Rule 413 to ascertain the correct procedure for filing and perfecting a second-level formal appeal. Pursuant to MCL 408.1041, MCL 408.1042, and Rule 413, a notice of appeal must be in writing and must be filed within fifteen working days of receipt of the decision relative to a citation. The circuit court erred by concluding that petitioner's statement in the telephone conference that it wished to proceed to the second-level formal appeal constituted sufficient notice under MCL 408.1042.

We reverse and remand. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello